

INTERFERENCE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of: David WALLACH et al

Application No.: 09/155,676

Filed: January 4, 1999

For: MODULATORS OF TNF RECEPTOR ASSOCIATED FACTOR (TRAF), THEIR ...



Art Unit: 1635

Examiner: J. Epps

Washington, D.C.

Atty.'s Docket: WALLACH-21

Date: February 9, 2001

RECEIVED

FEB 15 2001

TECH CENTER 1600/2800

THE COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

Sir:

Transmitted herewith is a [] Amendment [X] Request for Interference under 37 C.F.R. §1.607 (USP 5,843,721) in the above-identified application.

[] Small Entity Status: Applicant(s) claim small entity status. See 37 C.F.R. §1.27.

[XX] No additional fee is required.

[] The fee has been calculated as shown below:

	(Col. 1)	(Col. 2)	(Col. 3)
	CLAIMS REMAINING AFTER AMENDMENT	HIGHEST NO. PREVIOUSLY PAID FOR	PRESENT EXTRA EQUALS
TOTAL	* 33	MINUS ** 50	0
INDEP.	* 6	MINUS *** 6	0
FIRST PRESENTATION OF MULTIPLE DEP. CLAIM			

ADDITIONAL FEE TOTAL

SMALL ENTITY		OR	OTHER THAN SMALL ENTITY	
RATE	ADDITIONAL FEE		RATE	ADDITIONAL FEE
x 9	\$		x 18	\$
x 40	\$		x 80	\$
+ 135	\$		+ 270	\$
		OR		
			TOTAL	\$

- * If the entry in Col. 1 is less than the entry in Col. 2, write "0" in Col. 3.
- ** If the "Highest Number Previously Paid for" IN THIS SPACE is less than 20, write "20" in this space.
- *** If the "Highest Number Previously Paid for" IN THIS SPACE is less than 3, write "3" in this space.

The "Highest Number Previously Paid For" (total or independent) is the highest number found from the equivalent box in Col. 1 of a prior amendment of the number of claims originally filed.

[XX] Conditional Petition for Extension of Time

If any extension of time for a response is required, applicant requests that this be considered a petition therefor.

[] It is hereby petitioned for an extension of time in accordance with 37 CFR 1.136(a). The appropriate fee required by 37 CFR 1.17 is calculated as shown below:

Small Entity

Response Filed Within

- [] First - \$ 55.00
- [] Second - \$ 195.00
- [] Third - \$ 445.00
- [] Fourth - \$ 695.00

Month After Time Period Set

Other Than Small Entity

Response Filed Within

- [] First - \$ 110.00
- [] Second - \$ 390.00
- [] Third - \$ 890.00
- [] Fourth - \$ 1390.00

Month After Time Period Set

[] Less fees (\$_____) already paid for ____ month(s) extension of time on _____.

[] Please charge my Deposit Account No. 02-4035 in the amount of \$_____.

[] Credit Card Payment Form, PTO-2038, is attached, authorizing payment in the amount of \$_____.

[] A check in the amount of \$_____ is attached (check no.).

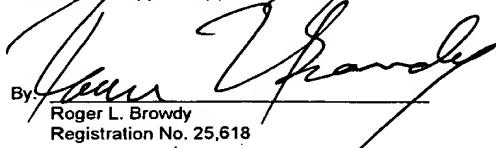
[XX] The Commissioner is hereby authorized and requested to charge any additional fees which may be required in connection with this application or credit any overpayment to Deposit Account No. 02-4035. This authorization and request is not limited to payment of all fees associated with this communication, including any Extension of Time fee, not covered by check or specific authorization, but is also intended to include all fees for the presentation of extra claims under 37 CFR §1.16 and all patent processing fees under 37 CFR §1.17 throughout the prosecution of the case. This blanket authorization does not include patent issue fees under 37 CFR §1.18.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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TECH CENTER 1600
2/16/01

Atty. Docket: WALLACH 16002350

In re Application of:) Art Unit: 1635
WALLACH et al)
Appln. No.: 09/155,676) Examiner: J. Epps
Filed: January 4, 1999) Washington, D.C.
For: MODULATORS OF TNF RECEPTOR)
ASSOCIATED FACTOR (TRAF),)
THEIR PREPARATION AND USE)

REQUEST FOR INTERFERENCE UNDER 37 C.F.R. §1.607

Honorable Commissioner for Patents
Washington, D.C. 20231

Sir:

Pursuant to 37 C.F.R. §1.607, applicant hereby requests to have an interference declared between the above-identified application and U.S. Patent 5,843,721. The requirements of 37 C.F.R. §1.607(a) will be fulfilled in the following sections which correspond to the sub-sections of 37 C.F.R. §1.607(a).

(1) The patent is identified as Rothe et al patent no. 5,843,721, which patent is assigned on its face to Tularik Inc.

(2) The proposed count is:

Claim 3 of U.S. patent 5,843,721

or

Claim 4 of U.S. patent 5,843,721

or

Claim 12 of U.S. patent 5,843,721

or

Claim 54 of application no. 09/155,676.

(3) All of claims 1-15 of patent 5,843,721 correspond to the proposed count.

(4) At least claim 54 of the above-identified application, which is already pending in the present application, corresponds to the proposed count. Claim 54 of the present application corresponds exactly to the last paragraph of the proposed count, and claims 3, 4 and 15 of the '721 patent correspond exactly to the first three paragraphs of the proposed count.

The remaining claims of the '721 patent correspond to the proposed count as all of the claims other than 3, 4 and 15, which correspond exactly to the count, are narrower than one or the other of claims 3, 4 and 15 and are fully encompassed within the scope of one or more of claims 3, 4 or 15. Thus, none of them are directed to a patentably distinct invention therefrom, and accordingly, all correspond to the count.

(5) Claim 54 of the above-identified application has been in the above-identified application since February 4, 2000. Thus 37 C.F.R. §1.607(a)(5) is not applicable to the present situation.

(6) While claim 54 was not presented in the present application until more than one year following the issuance of the '721 patent, it is drawn to the same invention as originally-appearing DNA claims 1-12, and particularly claim 9 as originally filed, which read:

9. A DNA sequence encoding the protein NIK, isoforms, fragments or analogs thereof, said NIK, isoforms, fragments or analogs thereof being capable of binding to TRAF2 and which is capable of modulating the activity of NF- κ B.

Claim 9 was in the file at the time that the present national phase application was submitted on October 2, 1998, and was in international application PCT/IL97/00117, upon which the present application is the national stage, since the international filing date of April 1, 1997. As claim 9 is for the same or substantially the same subject matter as the claims of the '721 patent and was present in the application prior to one year from the date on which the patent was granted, 35 U.S.C. §135(b) is fully met.

In accordance with 37 C.F.R. §1.607(b), it is requested that examination of this application be conducted with special dispatch within the Patent and Trademark Office. Furthermore, in accordance with 37 C.F.R. §1.607(d), it is requested that a notice that an applicant is seeking to provoke an interference with the patent be placed in the file of the patent, and a copy of the notice sent to the patentee without identifying the present applicant. Finally, it is requested that, following the determinations required therein,

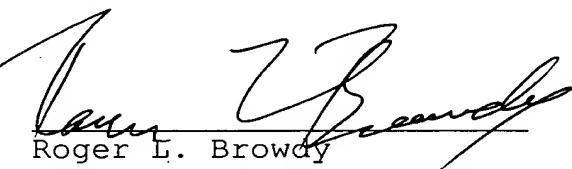
that an interference be declared in accordance with 37 C.F.R. §1.607(b).

It should be noted that 37 C.F.R. §1.608 is not applicable to the present situation, as the present application is the national phase of international application PCT/IL97/00117, which was filed on April 1, 1997. The present application also claims priority from Israeli priority applications 117800, filed April 2, 1996, and 119133, filed August 26, 1996. However, regardless of whether or not the present application is entitled to its Israeli priority applications (both of which were filed in the English language), applicants' international filing date is prior to the earliest effective filing date of the '721 patent, which was July 3, 1997.

Respectfully submitted,

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